IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-9-2007

CORAM

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

W.P.No.26737 of 2004
and
WPMP Nos.32557 of 2004 and 1278 of 2007

Shasun Chemicals & Drugs Ltd.,
No.3 Duraisamy Road
T.Nagar, Chennai 600 017,
Represented by its
Company Secretary
V.Parthasarathy .. Petitioner

vs

1.The Small Industries Promotion
Corporation of Tamilnadu
Rep. By its Chairman
No.19-A, Rukmani Lakshmipathi Road
Egmore, Chennai 600 008.
2.S.Balakrishnan (deceased)
Proprietor, Chemix
No.10, A.V.Krishnaswamy Street
Valasaravakkam
Chennai 600 087
3.B.Alamelu
4.B.Srinivasan
5.B.Subramaniam
(RR3 to 5 substituted as the LRs
of the deceased 2nd respondent
as per order dt.26.10.2006 in
WPMP Nos.18212 and 18213/2006) .. Respondents

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Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the first respondent to grant approval and consequently permit transfer of land of 5.01 acres at the SIPCOT Industrial Complex, Cuddalore, in favour of the petitioner without insisting upon the payment of any differential land cost as per their demand letter dated 1.12.2003.

For Petitioner : Mr.Sathish Parasaran

For Respondents : Mr.P.S.Seetharaman for R1

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ORDER

Seeking a writ of mandamus to direct the first respondent to grant approval and consequently permit transfer of land of 5.01 acres at SIPCOT Industrial Complex, Cuddalore, in favour of the petitioner without insisting upon the payment of any differential land cost as per the demand of the SPICOT's letter dated 1.12.2003, the petitioner has brought forth this writ petition.

2.The Court heard the learned Counsel on either side and perused the materials available.

3.The following facts would emerge as facts admitted:

(a) The petitioner is a Public Limited Company engaged in manufacturing and marketing the drugs and chemicals. In order to expand its production activities, they were finding a good location for plant preferably something proximate to the existing facility at Cuddalore. The second respondent had an industrial plot with land and building, all situated in Plot No.A-1A in the SPICOT Industrial Complex at Cuddalore, next to the petitioner's Unit. He was desirous of selling the same. Originally, the said industrial plot together with land and building was the property of one Amajin Agro Exports Ltd., which had set up its Export Unit for manufacturing cattle feed. In view of the financial crisis, the company came to be wound up by the proceedings before this Court in C.P.No.249/97. The assets and liabilities including the subject property, came under the custody of the Official Liquidator. Then, the property was brought for public auction. Following the advertisement, the upset price was fixed at Rs.92.50 lakhs. The second respondent participated in the bid and came out successful. Consequently, this Court passed an order on 30.4.2002, directing the second respondent to remit the bid amount and also directed the first respondent SIPCOT to execute the lease cum sale deed in favour of the second respondent. Pursuant to the above orders, the first respondent executed a modified leased deed on 4.12.2002, a registered one, whereby it transferred the leasehold rights of the said Amajin Agro Exports Ltd, namely the original lessee, in favour of the second respondent. The petitioner entered into a Memorandum of Understanding with the second respondent even before the execution of the modified lease deed referred to above.

(b) While the matter stood thus, the petitioner sent a representation to the first respondent for the sale deed to be executed in its favour. The first respondent filed an application before the Company Court stating that a mistake has crept in that proceedings, and hence, a suitable direction should be given for the remittance of a sum of Rs.64.68 lakhs towards the differential land cost, to which it was entitled to. In that proceedings, the second respondent has contended that it is not a regular transaction made by the SIPCOT; but, it was an auction purchase made, and a sale by public auction, and therefore, Clause 25 found

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therein, cannot be given effect to, and there was no need for any payment of any differential land cost as asked for by the SIPCOT. That application is pending. Thereafter, there was exchange of notices between the parties.

4.Under such circumstances, the petitioner has brought forth the instant writ petition before this Court seeking the relief that there should be a direction to the first respondent SIPCOT to execute a modified lease deed in its favour since a memorandum of understanding was actually entered into between the petitioner and the second respondent in the petitioner's place, and hence, it has got to be executed in its favour.

5.Advancing his arguments on behalf of the petitioner, the learned Counsel would submit that in the instant case, it is not in controversy that originally, the property in question, was actually with one Amajin Agro Exports Ltd. Once that company went on liquidation, all the assets and liabilities including the property in question, vested in the custody of the Official Liquidator; that pursuant to the orders of the Court, they were sold in auction, and the second respondent was the highest bidder; that under the circumstances, the modified lease deed, pursuant to the orders of the Court, was executed by the first respondent in favour of the second respondent; that even before that, there was a memorandum of understanding entered into for the transfer of leasehold rights by the second respondent in favour of the petitioner, of which the first respondent had got a clear knowledge; that pursuant to the request made for executing the modified lease deed directly in favour of the petitioner, a demand was made by the first respondent asking payment of Rs.64.68 lakhs as differential land cost, which is nothing but an illegal demand; that once the property has been sold in public auction and the payment has also been made, now the demand made, would be nothing but payment of consideration for the second time; that apart from that, it is the case of the SIPCOT as if the differential land cost has got to be obtained; that since there was a transfer of the leasehold right, there is no differential land cost that could be shown, noticed or worked out; that under the circumstances, the demand is nothing but an illegal one; that apart from that, the matter is also pending in the hands of the the Company Court; that the said question has got to be decided; that it has been clearly spoken to in Clause 1 of the modified lease agreement entered into between the first respondent and the second respondent; that it would be clear that till it is decided, no question of making any payment would arise; and that in view of the same, a direction has got to be given to the first respondent to execute the modified lease deed in favour of the petitioner.

6.Contrary to the above contentions, the learned Counsel for the first respondent would submit that it is true that pursuant to the orders of the Court, a modified lease agreement was entered into between the first respondent and the second respondent on 4.12.2002 wherein Clause 25 has been incorporated; that the said Clause reads that whenever there is a transfer of the leasehold

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right, the payment of the differential land cost has got to be paid; that in the instant case, it is not correct to state that the sale was made in public auction; that it is also not a lease cum sale as alleged; that it was a lease deed; that Clause 25 makes it clear that the differential land cost has got to be paid; that the same is worked out at Rs.64.68 lakhs; that even as per the Clause, either the Official Liquidator or the second respondent has to pay; that so long as it is not asked for, there is no question of considering the case of the petitioner; that the petitioner would come with the request for the transfer of the leasehold right and the execution of the modified lease deed in its favour; that once the petitioner has come with such a request, it is for the petitioner to make payment of Rs.64.68 lakhs; that the petitioner who wants to get the lease deed transferred from the second respondent, is also bound by the same agreement entered into between the first and the second respondents, whereby the differential land cost is payable; that even without making payment of the differential land cost, the petitioner has asked for transfer of the leasehold right; that now, the first respondent has no objection for executing the modified lease deed in favour of the petitioner; but, it must be on condition of payment of Rs.64.68 lakhs which would represent the differential land cost; that if a direction is issued to the first respondent to execute a modified lease deed in favour of the petitioner without that condition, it would be against the Clause 25 of the modified lease deed entered into between the first and the second respondents dated 4.12.2002; that further, it would directly affect the interest of the SIPCOT and cause loss; that under the circumstances, the petitioner's request for the execution of the modified lease deed in favour of the petitioner even without making payment of the differential land cost, should not be considered and has got to be rejected, and hence, the writ petition has got to be dismissed.

7.The Court paid its anxious consideration on the rival submissions made.

8.In the instant case, it is not in controversy that the property in question was originally in possession of Amajin Agro Export Ltd., and when the company went on liquidation, the properties were in the custody of the Official Liquidator. The properties were brought for sale in auction after due publication. The highest bidder was the second respondent. Pursuant to the orders of this Court on 30.4.2002, a modified lease deed came to be executed by the first respondent in favour of the second respondent on 4.12.2002. Now, the request of the petitioner as could be seen above, is that it has entered into an agreement with the second respondent, and there was also a Memorandum of Understanding between the petitioner and the second respondent even before the execution of the modified lease deed dated 4.12.2002, and therefore, there cannot be any impediment for making such a modified lease deed in its favour directly by the first respondent. Contrarily, the first respondent comes out with the case to say that it is not denied that the Memorandum of

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Understanding was placed in its hand by the petitioner and the second respondent; but, the differential land cost which would amount to Rs.64.68 lakhs, must be paid. Now, at this juncture, it would be more apt and appropriate to look into the Clauses found in the modified lease deed, in respect of their contentions. The petitioner relies on Clause 1 while the first respondent relies on Clause 25 of the modified lease deed entered into between the parties on 4.12.2002. Clause 1 reads thus:

> "1.M/s CHEMIX the Party of the Second Part agrees to pay the sum of Rs.64.68 lakhs being the differential Land cost and other dues demanded by SIPCOT, if the court ordered to pay the same to the party of the First Part....."

Clause 25 reads as follows:

> "The party of the second part shall not assign, sublet, transfer or part with his interest in the allotted plot either in whole or in part except with the prior written consent of the party of first part. In the event of the party of second part seeking approval for change in constitution, or change in the management or control or amalgamation with any other company or transfer of interest to any third party either in whole or in part, party of first part shall grant approval provided the party of second part or any person claiming under the party of second part agrees to pay the cost determined by party of first part and the cost determined by part of first part shall be final and binding on the party of second part or any person claiming under the party of second part and cannot be questioned in any court of law."

9.A reading of the Clause 25 would indicate that whenever there is a transfer of interest, SIPCOT is entitled to have the differential land cost, which, according to the first respondent, amounts to Rs.64.68 lakhs. From the materials available, it is clear that after the execution of the modified lease deed by the first respondent in favour of the second respondent on 4.12.2002, a petition was filed by the first respondent before the Company Court stating that a mistake has crept in; that they are entitled to have the differential land cost which is Rs.64.68 lakhs, and hence, a direction should be given to the Liquidator or the second respondent to make the payment. It is pertinent to point out that the said application was contested by the second respondent stating that the first respondent was not entitled to the payment of the said differential land cost for the reason that it was not a sale made by the SIPCOT; but, it was a public auction conducted through the Official Liquidator, and under the circumstances, the Clause 25 cannot be given operation. Further, it is also noticed by this Court that under Clause 1 of the said modified lease deed, the party of the second part agrees to pay the sum of Rs.64.68 lakhs being the differential land cost and other dues demanded by the SIPCOT, if the Court ordered to pay the same to the party of first part. The emphasis has got to be laid to the words "if the

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Court ordered to pay the same to the party of the first part", and thus, it would be quite clear that the application now pending before the Company Court and also whether the SIPCOT is entitled for the further sum of Rs.64.68 lakhs are matters yet to be decided. Only thereafter, the demand of the SIPCOT would come to a close. It is admitted that the matter is yet pending before the Company Court. In such circumstances, there is no question of ordering the party either the second respondent or the Official Liquidator or the petitioner before this Court to make payment of Rs.64.68 lakhs as differential land cost, because the said question is yet to be decided by the Company Court.

10.Now, at this juncture, this Court is able to see force in the contention put forth by the learned Counsel for the first respondent. As far as the differential land cost is concerned, if there is a direction given to the first respondent to execute a modified lease deed in favour of the petitioner, then the first respondent could not secure its interest in respect of the said amount which would represent the differential land cost. Under such circumstances, this Court has to necessarily safeguard the interest of the first respondent also. Hence, it would be fit and proper to order as follows:

(i)The first respondent is directed to execute a modified lease deed in favour of the petitioner in respect of the properties, within a period of eight weeks herefrom on condition of the petitioner giving a bank guarantee for a sum of Rs.64.68 lakhs which, according to the SIPCOT, would represent the differential land cost.

(ii)The bank guarantee is directed to be kept alive by renewal if necessary, till the said question is decided by the Company Court.

(iii)The first respondent is also entitled to keep the bank guarantee in its custody till the payment of the said amount, if and by whom to be made.

11.Hence, this writ petition is, accordingly, ordered. No costs. Consequently, connected WPMPs are closed.

nsv/

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

The Chairman
The Small Industries Promotion
Corporation of Tamilnadu
No.19-A, Rukmani Lakshmipathi Road
Egmore, Chennai 600 008.

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+ 1 cc to Mr. Satish Parasaran, Advocate SR No. 58746

+ 1 cc to Mr. P. S. Seetha Raman, Advocate SR No. 58705

JRG(CO)
SR/28.9.2007 WP No.26737 of 2004

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